UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: ROSELINE Y. CHARLES, Debtor.	)	CASE NO.: 16-57698-pwb CHAPTER 7
ROSELINE Y. CHARLES Plaintiff, vs. CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE FOR STANWICH MORTGAGE LOAN TRUST, SERIES 2013-7 AND CARRINGTON MORTGAGE SERVICES, LLC, RUSHMORE LOAN MANAGEMENT SERVICES, LLC, AND MCCALLA RAYMER, LLC, Defendants.	)	ADVERSARY CASE NO. 16-05108

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS AMENDED COMPLAINT TO DETERMINE VALIDITY AND EXTENT OF LIEN VALIDITY, STATUS AND DISCHARGEABILITY OF DEBT AND FOR OTHER RELIEF AND DAMAGES

COME NOW Defendants, Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2013-7 ("Christiana Trust"), Carrington Mortgage Services, LLC ("Carrington"), and Rushmore Loan Management Services, LLC ("Rushmore") (collectively referred to herein as "Defendants"), by and through their undersigned counsel and submit this Brief in Support of Defendants' Motion to Dismiss

Amended Complaint to Determine Validity and Extent of Lien Validity, Status and Dischargeability of Debt and For Other Relief and Damages filed by Plaintiff-Debtor, Roseline Y. Charles ("Plaintiff") stating the following to this Honorable Court:

INTRODUCTION

Plaintiff initiated this action on May 16, 2016. *See* Dkt. 1. On July 1, 2016, Plaintiff filed her Amended Complaint (the "Amended Complaint") alleging multiple causes of action, including quiet title and declaratory relief. *See* Dkt. 4. Although Plaintiff has admitted that she executed a Note and Security Deed to the originating lender for the Loan, Plaintiff's central allegation supporting her claims are that the "Defendants" have no relationship to the Loan. Therefore, she seeks to invalidate any rights, title, or interest to the Property. In all three of her bankruptcies, including the current one, Plaintiff has acknowledged that third parties have a security interest in the Property. However, this is now the third time Plaintiff has filed a lawsuit seeking this requested relief. It is the ultimate form of gamesmanship which should not be tolerated.

On July 18, 2016, Defendants moved to dismiss Plaintiff's Amended Complaint on multiple grounds: (1) the claims are barred by res judicata since Plaintiff voluntarily dismissed her two prior lawsuits; (2) Plaintiff has no standing to assert these claims which belong to the bankruptcy estate; (3) the abandonment of the Property from the bankruptcy estate means that this Court lacks subject matter jurisdiction; (4) Plaintiff's quiet title and declaratory judgment claims fails as she did not satisfy the procedural requirements for such a claim; (5) Georgia law is clear that a party can possess a security interest in real property without being assigned the promissory note; (6) Plaintiff has no standing to challenge any assignment of the Security Deed; and, (7) Plaintiff's claims fail as a matter of law.

On August 4, 2016, Plaintiff filed her Response to Defendants' Motion to Dismiss[1] (the "Response"). *See* Dkt. 10. Much like Plaintiff's activities with respect to the Loan over the last several years, the Response attempts to create red herrings and divert the Court from the basic premise that Plaintiff's claims are without merit and should be dismissed. The reality is that Plaintiff has been contradicting herself for years by admitting in her bankruptcies that there is a secured interest in her Property and then filing three separate lawsuits seeking to declare the Loan invalid. Plaintiff's actions should no longer be tolerated as the Amended Complaint must be dismissed with prejudice.

The facts relevant to this matter are contained in Defendants' Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint previously filed with this Court. *See* Dkt. 6-1. Defendants will not repeat those facts here. Instead, Defendants incorporate the Statement of Facts contained in that filing by this reference.

ARGUMENT AND CITATION TO AUTHORITY

I. Plaintiff's Claims Are Barred By Res Judicata.

A. Plaintiff Voluntarily Dismissed Her Two Prior Lawsuits.

Foremost, it is unquestioned that Plaintiff filed voluntary dismissals of her First Lawsuit and Second Lawsuit. *See* Dkt. 6-12; 6-16. Pursuant to Fed. R. Civ. P. 41(a)(1)(B), Plaintiff's voluntary dismissal of her Second Lawsuit operated as an adjudication on the merits of her

[1] Plaintiff's Response consists of 36 pages in violation of BLR 7007-1(e) and Plaintiff did not seek the Court's approval to exceed page limits. Accordingly, Defendants request that the Court strike the portion of the Response that exceeds the page limits.

claims. As shown in detail *infra*, all of Plaintiff's lawsuits have centered around the argument that the Loan is invalid and to divest all parties of any rights, title, or interest to the Property. Plaintiff should not be permitted a third bite at the apple after voluntarily dismissing two prior lawsuits. Accordingly, Plaintiff's claims are barred by res judicata and should be dismissed with prejudice.

B. All Three Lawsuits Arise Out Of The Same Operative Facts.

In her Response, Plaintiff attempts to manufacture issues before the Court in order to allow her defunct claims to survive. Specifically, Plaintiff attempts to draw nuances between her quiet title and declaratory judgment claims contending that because she did not assert a specific claim for quiet title in the First Lawsuit, her current claims are not barred. *See generally* Dkt. 10. However, as demonstrated below, the allegations that Plaintiff has raised in each of her lawsuits arise out of the same nucleus of operative fact and seek the same relief.

In determining whether the prior and present causes of action are the same, the court must decide whether the same actions arise out of the same nucleus of operative fact, or are based upon the same factual predicate. *See Home Depot U.S.A., Inc. v. U.S. Fire Ins. Co.*, 299 Fed. Appx. 892 (11th Cir. 2008) (holding that a subsequent lawsuit filed by plaintiff seeking the same relief as a prior lawsuit was barred by res judicata). Res judicata bars claims that not only were raised in a prior action, but also to claims that could have been raised at the time the prior action was filed. *See Bailey v. Deutsche Bank Trust Co. Americas*, 2013 U.S. Dist. LEXIS 30489, 9-10 (M.D. Ga. Mar. 5, 2013). Identical claims and legal theories are not required for res judicata to apply. *See Draper v. Atlanta Indep. Sch. Sys.*, 377 F. App'x 937, 939 (11th Cir. 2010). Unless there has been a substantial change in the facts or law, "res judicata bars all subsequent suits raising allegedly new theories." *O'Connor v. Wells Fargo Bank, N.A.*[2], 2012 U.S. Dist. LEXIS 187351 (N.D. Ga. Oct. 29, 2012) (citing *Jaffree v. Wallace*, 837 F.2d 1461, 1469 (11th Cir. 1988); *Shurick v. The Boeing Co.*, 623 F.3d 1114, 1117 (11th Cir. 2010) (holding that res judicata applies as all allegations arose out of same nucleus of operative fact and plaintiff's attempt to assert different legal bases was purely "cosmetic").

The Response attempts to differentiate her claims for declaratory judgment and quiet title as a basis for defeating res judicata. However, while Plaintiff may have alleged different causes of action, it is apparent that each lawsuit arises from the same Property, Loan, and seeks to invalidate the security interest in the Property. Specifically, Plaintiff has sought the same relief in all three lawsuits:

Lawsuit	**Relief Sought**
First Lawsuit	"Plaintiff prays for judgment against defendants … for a declaration and determination that Plaintiff is the rightful holder of title to the property **and that Defendants herein, and each of them, be declared to have no estate, right, title or interest in said property**." "For a judgment forever enjoining said defendants, and each of them and all others not herein named, from claiming any estate, right, title or interest in the subject property."

[2] The *O'Connor* case is instructive here. In that case, the plaintiff filed three separate lawsuits against foreclosure counsel, the originating lender, and the assignee of the loan. *See generally O'Connor*, 2012 U.S. Dist. LEXIS 187351. Not every defendant was a party to every lawsuit. *Id*. Each lawsuit alleged slightly different facts and/or causes of action (i.e. that the assignment of the promissory note was fraudulent, that the security deed was invalid and unenforceable, or that the actions of the mortgage servicer violated the FDCPA). *Id*. at *8-10. However, despite alleging a different legal theory underlying their requested relief, the court found that the claims in each lawsuit all arose out of the same nucleus of operative fact and were based upon the same factual predicate since they all concerned the validity of the defendants' interest in the underlying loan and standing to foreclose. *Id*. at *24. Accordingly, the plaintiff's claims were barred by res judicata. *Id*.

	See Dkt. 6-10.
Second Lawsuit	"WHEREFORE, plaintiff respectfully demands judgment as follows: 1. That the Court declare **that defendants have no valid title and rights with respect to plaintiff's property, promissory note, or security deed**." *See* Dkt. 6-12.
Current Lawsuit	"WHEREFORE, plaintiff respectfully demands judgment as follows: 1. That the Court declare **that defendants have no valid title and rights with respect to plaintiff's property, promissory note, or security deed**." *See* Dkt. 4.

Despite Plaintiff's attempted spin, it is apparent that all three of Plaintiff's lawsuits arise out of the same nucleus of operative fact and seek the same relief -- declaring that the "Defendants" have no interest in the Property. Plaintiff has had a full and fair opportunity to litigate her claims multiple times and has not succeeded. This is precisely the type of waste of judicial resources that res judicata is intended to prevent. Accordingly, Plaintiff's claims are barred by res judicata and the Complaint should be dismissed.

C. The Current Defendants Are Privies Of Prior Defendants.

Finally, Plaintiff's Response argues that res judicata does not apply because "not a single party named as a defendant in the First Lawsuit is mentioned in either the Second Lawsuit or instant Complaint." *See* Dkt. 10, p. 25. However, as the operative facts in all three lawsuits were the same, Defendants are privies of the parties to the prior lawsuits and, thus, res judicata applies.

"A privy is one who is represented at trial and who is in law so connected with a party to the judgment as to have such an identity of interest that the party to the judgment represented the same legal right." *See Cordner v. Specialized Loan Servicing, LLC*, 2016 U.S. Dist. LEXIS 88066 (N.D. Ga. June 7, 2016) (citing *Moreland v. Bank of New York Mellon*, 2015 U.S. Dist. LEXIS 91423, at *3-5 (S.D. Ga. July 14, 2015). "Courts acknowledge that privity exists between preceding and succeeding owners of property .." and "…similarly, assignees and servicing agents of a loan are in privity with an original mortgage company." *Ernest v. CitiMortgage, Inc.*, 2014 WL 294544, at *4 (W.D. Tex. Jan 22, 2014). Where one party is a successor in interest of another, privity exists. *See Bailey*, 2013 U.S. Dist. LEXIS 30489, at *2; *see generally O'Connor v. Wells Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 187351 at *23 (N.D. Ga. Oct. 23, 2012) (allegations against predecessor-in-interest were treated as made against any successor-in-interest in subsequent lawsuit).

Defendants were named as parties in the Second Lawsuit and are privies of the parties from the First Lawsuit. Plaintiff admits that the originating lender of the Loan was Branch Banking and Trust Company ("BB&T"), who was a party to the First Lawsuit. *See* Dkt. 4, ¶ 1. The Loan has been subsequently transferred and assigned to Christiana Trust. *See* Dkt. 6, Ex. D. Additionally, Plaintiff admits that Carrington and Rushmore have acted as servicers for the Loan. *See* Dkt. 4, ¶¶ 17, 23-24. Based upon the case law establishing that privity exists between an originating lender, successor in interest, and mortgage servicer for a loan, it is clear that privity exists between the current Defendants and the parties to the prior lawsuits. Therefore, res judicata applies and the Complaint must be dismissed.

II. Plaintiff Lacks Standing To Bring This Lawsuit And This Court Is Without Subject Matter Jurisdiction.

Defendants' Motion to Dismiss cited cornerstone case law from the Eleventh Circuit and this Court holding that, because Plaintiff's causes of action accrued prior to her bankruptcy filing, she has no standing to assert her claims as they are part of the bankruptcy estate. *Counts v. Red Coats, Inc.*, 2010 U.S. Dist. LEXIS 66424 (N.D. Ga. May 28, 2010). A cause of action belonging to the debtor in a bankruptcy proceeding vests in the bankruptcy estate upon the filing of a bankruptcy petition. *See* 11 U.S.C. § 541; *Bernstein v. Wells Fargo Bank, N.A. (In re Bernstein)*, 525 B.R. 505 (Bankr. N.D. Ga. 2015) (dismissing adversarial proceeding filed by debtor against mortgage lender because debtor did not have standing to prosecute pre-petition claims). Therefore, in this case, only the bankruptcy trustee is the proper party in interest to assert these claims.

A. Plaintiff's Response Provides No Authority Demonstrating Standing.

Plaintiff's Response argues that Plaintiff retains standing to assert non-monetary claims. *See* Dkt. 10, p. 4. However, Plaintiff's Response is conspicuously absent of any authority for this proposition and the cases cited by Plaintiff are either easily distinguishable from the facts of the current matter or are irrelevant for the arguments presented in Plaintiff's Response.

Plaintiff first relies on *Rowland v. Novus Financial*[3], for the proposition that a Chapter 7 debtor was permitted to proceed with a TILA claim to rescind a loan. *See* Dkt. 10. However, the court from the District of Hawaii expressly held that "Plaintiff's TILA cause of action existed prior to the bankruptcy and therefore is included in the bankruptcy estate." *Rowland v. Novus*

[3] 949 F. Supp. 1447 (D. Hi. 1996)

Fin. Corp., 949 F. Supp. 1447, 1453 (D. Hi. 1996). As a result, the court ordered that the bankruptcy trustee was to be substituted in place of the plaintiff.[4] *Id.*

Plaintiff's reliance upon *Pace v. Hurst Boiler & Welding Co.*[5] is also unfounded. In *Pace*, the plaintiff was seeking monetary damages and injunctive relief on a claim for employment discrimination. *See Pace v. Hurst Boiler & Weldong Co.*, 2011 U.S. Dist. LEXIS 2874, at *1 (M.D. Ga. Jan. 12, 2011). The defendant moved to dismiss the lawsuit on the basis of judicial estoppel because the plaintiff failed to disclose his claims in a prior bankruptcy.[6] *Id.* The court held that plaintiff's injunctive relief claim was not dismissed because "judicial estoppel does not apply to claims for injunctive relief." *Id.* at *12. The court specifically noted that the holding **only applies to cases dealing with judicial estoppel**, which did not bar claims for injunctive relief. *Id.* at n. 4 (emphasis added). The current case is easily distinguishable from *Pace* as Plaintiff's Amended Complaint does not assert any claims for injunctive relief.[7] Moreover, the issue of judicial estoppel is not before this Court. Accordingly, this holding has no bearing on the current case[8]. Overall, Plaintiff has provided no authority to demonstrate that she has

[4] The court in *Rowland* noted that the plaintiff may have standing to assert a TILA claim if it was exempt from the bankruptcy estate. However, plaintiff did not allege that the claim fell under an exemption. *See* 949 F. Supp. at 1454.

[5] 2011 U.S. Dist. LEXIS 2874 (M.D. Ga. Jan. 12, 2011).

[6] Plaintiff relies upon other cases which deal strictly with judicial estoppel. *See Hands v. Winn-Dixie Stores, Inc.*, 2010 U.S. Dist. LEXIS 116322 (S.D. Ala. Nov. 1, 2010). However, the court's holding in *Hands* in permitting any injunctive or declaratory claims to proceed was strictly limited to an analysis of judicial estoppel and did not address whether the debtor had standing to assert the claims in place of the bankruptcy trustee.

[7] This Court previously denied Plaintiff injunctive relief on similar claims in the Second Lawsuit. *See* Dkt. 6-13.

[8] Plaintiff provides a long block quote from *Wyatt v. Nowlin (In re Wyatt)*, 338 B.R. 76 (Bankr. W.D. Mo. 2006) for support in her Response. The plaintiff in *Wyatt* was attempting to determine whether the defendant had a security interest in a mobile home when there was no formal security agreement. *Id.* This case is also distinguishable as Plaintiff acknowledges she signed a

standing to assert these claims. Therefore, the trustee is the only party with standing to prosecute causes of action belonging to the estate and the Amended Complaint must be dismissed.

B. The Bankruptcy Court Has No Jurisdiction.

Plaintiff's Response states that she has filed a motion to compel the trustee to either join as a plaintiff or abandon her claim from the estate. *See* Dkt. 10, p. 11. On July 7, 2016, the bankruptcy trustee issued a Notice of Proposed Abandonment of Property. Although the bankruptcy trustee has not abandoned the claims with respect to this adversary proceeding, the abandonment of the Property divests this Court of subject matter jurisdiction.

The bankruptcy court's jurisdiction is limited to "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. §§ 157(a); 1334(b). A proceeding "arising in" title 11 typically includes administrative matters that can only arise in a bankruptcy. *See In re Toledo*, 170 F.3d 1340 (11th Cir. 1999). Where real property has been abandoned from property of the estate, the bankruptcy court lacks jurisdiction to determine dispute concerning the property. *See Maxwell v. HSBC Mortg. Corp. (In re Maxwell)*, 2012 Bankr. LEXIS 3876 (Bankr. N.D. Ga. Aug. 22, 2012) (dismissing adversary proceeding filed by debtor challenging validity of creditor's interest in real property). Accordingly, since the relief sought does not relate to the debtor's case, this Court lacks jurisdiction and the Amended Complaint must be dismissed.

Security Deed in favor of BB&T for the Property. *See* Amended Complaint, ¶ 1. In her Response, Plaintiff also cites to *In Re Brager*, 28 B.R. 966 (Bankr. E.D. Pa. 1983) for the argument that Plaintiff has standing to assert her claims under 11 U.S.C. § 506(a). However, Plaintiff has not raised any specific claims under 11 U.S.C. § 506(a) in her Amended Complaint and, as such, they should be disregarded by the Court. *See generally* Dkt. 4. Furthermore, Plaintiff is not seeking to determine the secured status of the Loan. Rather, she is seeking to quiet title to the Property despite previously acknowledging the secured status of the Loan. *See* Dkt. 6-6.

III. Plaintiff's Claims Fail As A Matter OF Law.

A. Christiana Trust Has A Valid Security Interest In The Property.

Plaintiff's Response attempts to confuse the issues before this Court. Plaintiff seeks to quiet title against Defendants and a declaration that the Defendants have no valid title and rights to the Property. *See generally* Dkt. 4. Plaintiff admits that she executed the Security Deed on the Property. *See* Dkt. 4, ¶ 1. It is clear from the public records that the Security Deed was assigned to Christiana Trust. *See* Dkt. 6-5. However, Plaintiff's Response focuses on the allegation that there is no assignment of the Note to Christiana Trust. *See generally* Dkt. 10. For the purposes of addressing the specific relief sought by Plaintiff in her Amended Complaint, this is entirely irrelevant.

As outlined exhaustively in Defendants' Motion to Dismiss, the Supreme Court of Georgia has expressly stated that the holder of a security deed is authorized to exercise the power of sale and maintain a security interest in real property "even if it does not also hold the note or otherwise have any beneficial interest in the debt obligation underlying the deed." *You v. JPMorgan Chase Bank, N.A.*, 293 Ga. 67, 74 (2013). Christiana Trust need only be the last assignee of the Security Deed in order to have the ability to foreclose on the Property and possess a valid security interest -- regardless of whether the Note has been assigned. *Id.* This is clearly established by the public records of which this Court may take judicial notice. Based upon the relief sought by Plaintiff -- to divest Defendants of any security interest in the Property -- the arguments presented in the Response are nothing more than a red herring which should be disregarded by the Court. Accordingly, the Amended Complaint should be dismissed.

B. Plaintiff Has Failed To Satisfy The Procedural Requirements For A Quiet Title Action.

The Georgia Quiet Title Act requires Plaintiff to file a plat of survey of the land to any lawsuit asserting a quiet title claim. *See generally* O.C.G.A. § 23-3-62(c). Plaintiff's Amended Complaint is devoid of any sufficient plat of survey. Accordingly, the Amended Complaint is in noncompliance with O.C.G.A. § 23-3-62(c) and should be dismissed on this basis alone. *See GHG, Inc. v. Bryan*, 275 Ga. 336, 566 (Ga. 2002) ("A petition [to quiet title] is subject to dismissal only when on the face of the pleadings it appears that it is in noncompliance with O.C.G.A. § 23-3-62."); *Joseph v. CitiMortgage*, 2011 WL 5156817, at *2 (N.D. Ga. Oct. 27, 2011) (dismissing quiet title action for plaintiff's failure to file plat of survey of the land); *Mann v. Blalock*, 286 Ga. 541 (2010) (holding quiet title action legally defective for plaintiff's failure to file plat of survey); *see also Cummings v. Mortgage Elec. Registration Sys.*, 2014 U.S. Dist. LEXIS 105036 (N.D. Ga. July 30, 2014) (holding that where plaintiff failed to include a description of the land involved in the proceeding and include a plat of survey of the land).

Additionally, Plaintiff cites to *Johnson v. Bank of America, N.A.*[9] for the proposition that Plaintiff can assert a quiet title action. *See* Response, p. 20. This case dealt exclusively with claims under O.C.G.A. § 23-3-60. *See Johnson*, 333 Ga. App. 539 (2013). The court in the Second Lawsuit, where Plaintiff made nearly identical allegations, previously held that Plaintiff could not support a claim under O.C.G.A. § 23-3-60. *See* Dkt. 6-15. Accordingly, this case provides no support for Plaintiff's claims and warrants dismissal of the Amended Complaint.

[9] 333 Ga. App. 539 (2015).

C. Plaintiff Has Contradicted Statements Made In Prior Bankruptcies And Lawsuits.

Plaintiff's Complaint and Response also contain several contradictory statements from prior statements made by Plaintiff in her bankruptcies. These contradictory statements reflect that Plaintiff's Amended Complaint is frivolous and her claims are without merit. Foremost, Plaintiff admits that she executed the Note and Security Deed to BB&T on the Property. *See* Amended Complaint, ¶ 1. In Plaintiff's current bankruptcy, she identified Rushmore as a secured creditor to the Property[10]. Therefore, a closer analysis of Plaintiff's allegations reveals that she is not questioning whether there is a security interest in the Property. Rather, she is questioning whether Christiana Trust is the proper secured party to the Loan -- i.e. whether the Assignments recorded in the public records validly convey rights under the Security Deed to Christiana Trust. It is well settled in Georgia that Plaintiff has no standing to challenge these Assignments.[11] *See Ames v. JPMorgan Chase Bank, N.A.*, No. S15G1007 (Mar. 7, 2016). Accordingly, the Amended Complaint must be dismissed.

D. Plaintiff's FDCPA Claim Is Without Merit.

Plaintiff's Response admits that the only basis for her FDCPA claim is a letter sent by McCalla Raymer to Plaintiff. *See* Dkt. 10, p. 30. Plaintiff makes no allegations against Rushmore or Carrington which would support an FDCPA claim. Plaintiff's Response states that no allegations are necessary because they are "vicariously liable for McCalla's violations …" *Id.* However, Plaintiff's Response is conspicuously absent of any legal authority for this assertion.[12]

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[10] Plaintiff identified BB&T as the secured creditor for the Property in the First Bankruptcy. *See* Dkt. 6-6.

[11] Plaintiff's Response also repeats the same allegations regarding the securitization of Plaintiff's Loan. As stated in the Motion to Dismiss, Plaintiff has no standing to assert a claim for alleged improper securitization. *See Veal v. Deutsche Bank Nat. Trust Co.*, No. 1:13-CV-3610-WSD, 2014 WL 3611743, at *4 (N.D. Ga. July 17, 2014)

Plaintiff further argues that the correspondence sent by McCalla Raymer stated that Rushmore "may not be the holder of the Security Deed" and such provides the basis for liability under the FDCPA. *See* Dkt. 4, ¶ 27. This argument was eviscerated by the Georgia Supreme Court. *See You v. JP Morgan,* 293 Ga. 67, 74 (2013) (holding that a notice of foreclosure does not require the identification of the secured creditor for a mortgage loan). Moreover, the court in *You* ruled that the party with the full authority to negotiation the Loan need not be the secured creditor. *Id.* Moreover, McCalla's correspondence clearly identified Christiana Trust as the holder of the Security Deed and Rushmore as the loan servicer. *See* Dkt. 1, Ex. K. Finally, all of the correspondence relied upon by Plaintiff concerns the foreclosure of a security interest on the Property. *See generally* Dkt. 4. The Eleventh Circuit has held that "foreclosing on a security interest is not a debt collection activity for the purposes of § 1692g." *Warren v. Countrywide Home Loans, Inc.*, 342 Fed. App. 458, 460 (11th Cir. 2009) ("Several courts have held that an enforcer of a security interest such as a [mortgage company] foreclosing on mortgages of real property … fall outside the ambit of the FDCPA …"). Accordingly, Plaintiff's FDCPA claim fails as a matter of law and must be dismissed.

E. Plaintiff's RESPA Claim Fails.

Defendants' Motion to Dismiss seeks dismissal of Plaintiff's purportedly RESPA claim partially on the basis that Plaintiff has not provided the required information necessary about her request. *See Malally v. BAC Home Loan Servicing, LLC*, 2010 WL 5140626, *8 (N.D. Ga. Oct. 8, 2010). Plaintiff's Response attaches a letter from Rushmore purporting to respond to correspondence from Plaintiff dated February 8, 2016.[13] Plaintiff did not attach a copy of the purported Request for Information and, therefore, Plaintiff has failed to satisfy the requirements under Georgia law.

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[12] To the extent that Plaintiff is attempting to assert liability against Rushmore or Carrington under the FDCPA, the FDCPA does not apply to them as loan servicers. *See Fenello v. Bank of Am., N.A.*, 2013 U.S. Dist. LEXIS 159925 (N.D. Ga. 2013) (holding that the FDCPA is inapplicable to mortgage servicers).

Plaintiff's Response relies upon secondary authority for the argument that a request for a mortgage loan schedule is a request for information about the servicing of the Loan. This is contrary to established case law. *See Jones v. Vericrest Fin., Inc.*, 2011 U.S. Dist. LEXIS 151458 (N.D. Ga. Dec. 7, 2011); *Hintz v. JPMorgan Chase Bank, N.A.*, 2011 WL 579339 at *8 (D. Minn. Feb. 8, 2011) ("the letters were not QWRs because Plaintiffs did not identify purported errors in their account or ask questions related to [the servicer's] servicing of their loan and because "Plaintiffs' letters had no relation to [the servicer's] receipt or application of their payments"). Here, Plaintiff has failed to provide any information about her initial request for information and cannot provide any factual support for her claim. The limited factual support Plaintiff has provided clearly demonstrates that her requested information does not constitute information about the servicing of the Loan and, therefore, any RESPA claim fails.

CONCLUSION

As demonstrated above, Plaintiff's claims are barred by res judicata, Plaintiff does not have standing to pursue these pre-petition causes of action against the Defendants, and all claims fail as a matter of law. Accordingly, Defendants request that Plaintiff's Amended Complaint be dismissed with prejudice.

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[13] The exhibit attached to Plaintiff's Response was not part of Plaintiff's Complaint, is outside of the pleadings, and should not be considered for evaluating Defendants' Motion to Dismiss.

Respectfully submitted this 18th day of August, 2016.

/s/Teresa L. Bailey
Teresa L. Bailey
Georgia Bar No. 572516
Attorneys for Defendants, Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust Series 2013-7, Carrington Mortgage Services, LLC, and Rushmore Loan Management Services, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing **REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT TO DETERMINE VALIDITY AND EXTENT OF LIEN VALIDITY, STATUS AND DISCHARGEABILITY OF DEBT AND FOR OTHER RELIEF AND DAMAGES** by filing same with the CM/ECF system, which will automatically send email notifications to all attorneys of record and via U.S. Mail with proper postage for delivery upon the following:

Roseline Y. Charles, *Pro Se*
1944 Acorn Lane
Dacula, GA 30019

This 18th day of August, 2016.

/s/Teresa L. Bailey
Teresa L. Bailey
Georgia Bar No. 572516
Attorneys for Defendants, Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust Series 2013-7, Carrington Mortgage Services, LLC, and Rushmore Loan Management Services, LLC

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